FINAL REPORT
OF THE
PENSION MANAGEMENT
OVERSIGHT COMMISSION

Indiana Legislative Services Agency
200 W. Washington St., Suite 301
Indianapolis, Indiana 46204-2789

November 2008

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2008

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Pension Management Oversight Commission

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Whiteland

Richard McClain
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Dennis Kruse
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Lay Members

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James P. Sperlik, Fiscal Analyst
Peggy Piety, Attorney
Allen Morford, Attorney

November 2008

A copy of this report is available on the Internet. Reports, minutes, and notices are organized by committee. This report and other documents for this Commission can be accessed from the General Assembly Homepage at http://www.in.gov/legislative/.

FINAL REPORT

Pension Management Oversight Commission

I. STATUTORY AND LEGISLATIVE COUNCIL DIRECTIVES

The Indiana General Assembly enacted legislation (IC 2-5-12) directing the Pension Management Oversight Commission (Commission) to do the following:

(1) Study the investment and management practices of the boards of the public retirement funds.
(2) Determine what constitutes adequate wage replacement levels at retirement (including benefits from public retirement funds and Social Security) for public employees.
(3) Study the impact of federal law and proposals concerning pensions, annuities, and retirement benefits.
(4) Study the retirement funds established in IC 36-8.
(5) Study methods and levels of funding for public retirement funds.
(6) Study other topics as assigned by the Legislative Council.
(7) Study other topics as directed by the Commission's chair.

The Commission consists of 12 members: four Representatives, 4 Senators, and 4 lay members who must be experts in the areas of finance, investments, or pension fund management. The chair of the Legislative Council appoints the chair of the Commission.

The Legislative Council assigned the following additional responsibilities to the Commission in 2008:

A. Divesting Indiana's public pension funds from terror-sponsoring states (HR 108).
B. Use of PERF disability or worker's compensation insurance for firefighter disability (HR 59).
C. Whether there is a legislative remedy that would allow the tax-free payment of death benefits from certain police and firefighter pension funds and whether there are other options for the payment of death benefits to public employee retirement fund members (SR 13).
D. Providing cost-of-living allowances for PERF and TRF biennially in the state budget (SR 19).
E. Certain issues concerning the Prosecuting Attorneys Retirement Fund (SR 26).
F. Certain issues relating to certain public safety officers and certain members of the Teachers' Retirement Fund (SR 71).
G. Issues related to payment of benefits under the 1925 Police Pension Fund, the 1937 Firefighters' Pension Fund, and the 1953 Police Pension Fund (HEA 1001-2008).

II. INTRODUCTION AND REASONS FOR STUDY

The Commission determined that it would review the following issues.

A. Public Employees' Retirement Fund (PERF) Issues

Since its inception in 1985, the Commission has provided a bipartisan forum for the study of proposed changes in the laws governing Indiana’s public pension funds. This year, as it does each interim, the Commission reviewed numerous issues raised by PERF and TRF and various stakeholders.

The Commission has, for several years, heard presentations from various stakeholders on increasing retirement benefits for PERF members and retirees, such as the following.

(1) A reduction in PERF's vesting requirement;(Retired Indiana Public Employees Association) (RIPEA);
(2) Elimination of the age 55 requirement for early retirement; (Indiana State Employees Association) (ISEA))
(3) Increasing the PERF multiplier (RIPEA); and
(4) Alignment of the number of years of service required for a member to vest with the number of years of service required to receive death benefits (Representative William Ruppel).

(5) A status report on the implementation of the retirement medical benefits account established by SEA 501 (P.L. 44-2007).
(6) A status report on the implementation of a Section 401(h) account (a retirement medical expense reimbursement account for state employees established as a part of PERF).

The status reports on SEA 501 were first heard by the Commission in 2007, and the Commission decided that this issue will be heard annually.

(7) A status report on PERF and TRF divestment of companies doing business in Sudan. The Commission wanted an update on the progress on this issue.

B. Teachers’ Retirement Fund (TRF) Issues

Senator Vaneta Becker brought the issue of a monthly minimum monthly benefit of $500 to the Commission, based on a proposal introduced during the 2008 session, and the Commission agreed to hear the proposal.

C. Judges' Retirement Fund Issues

The Commission has for several years heard presentations regarding the Judges' Retirement System and agreed to review an item brought to the Commission by Senator Robert Deig. The issue concerned benefits payable to members of the 1985 Judges' Retirement System who retire before January 1, 2010.

D. Prosecuting Attorneys' Retirement Fund (PARF) Issues

This issue was assigned to the Commission by the Legislative Council. The Commission heard testimony regarding the alignment of benefits provided by the PARF with benefits currently provided by the Judges' Retirement System.

E. Divesting Indiana's Public Pension Funds from Investments in Terror-Sponsoring States

This issue was assigned to the Commission by the Legislative Council. The Commission heard testimony urging Indiana's public pension funds to adopt a policy that requires divestment of stock of companies that do business in countries that support terrorism. The targeted countries are Cuba, Iran, Syria, North Korea, and Sudan.

F. Factors Used in Cost-of-Living (COLA) Determinations for PERF, TRF, and the State Police

The Chair brought this issue to the Commission and was coupled with the inclusion of a COLA in the state budget which was assigned to the Commission by the Legislative Council.

G. Authorizing Local Units of Government to Appoint or Reappoint Police Officers and Firefighters Who Are At Least 36 Years of Age

This issue was part of a public safety package brought to the Commission by the Indiana Professional Firefighters' Union and the Indiana Fraternal Order of Police.

The Commission desired to hear testimony from various stakeholders on this topic, along with testimony from PERF's actuary on the fiscal impact of this proposal.

H. Issues Related to Payment of Benefits under the 1925 Police Pension Fund, the 1937 Firefighters' Pension Fund, and the 1953 Police Pension Fund

This issue was assigned by the Legislative Council. The Commission chose to hear testimony from PERF on this issue.

I. Providing Cost-of-Living Allowances for PERF and TRF Biennially in the State Budget

This issue was assigned by the Legislative Council and was coupled with the factors used in COLA determinations. The Commission would hear testimony from PERF, TRF, the State Police, and various stakeholders on the efficacy of including COLAs in the state budget.

J. Public Safety Pension Issues

Several of the public safety pension fund issues were assigned by the Legislative Council: (1) providing a tax-free death benefit for members of the 1977 Police Officers' and Firefighters' Pension and Disability Fund; and (2) use of PERF disability or worker's compensation insurance for firefighter disability.

Other public safety issues were brought to the Commission by the Indiana Professional Firefighters and the Indiana Fraternal Order of Police, such as providing a minimum COLA to 1977 Police Officers' and Firefighters' Pension and Disability Fund members, increasing the surviving spouse benefit for 1977 Police Officers' and Firefighters' Pension and Disability Fund members; purchasing military service credit for 1977 Police Officers' and Firefighters' Pension and Disability Fund members, and an issue regarding the line-of-duty disability for Fund members regarding Class I disability.

The Commission agreed to hear all of them.

K. Age Discrimination.

This issue was brought to the Commission by Senator Dennis Kruse. HB 1034 from the 2008 session was the basis for the discussion.

L. Misclassification of Employees

This issue was brought to the Commission by Representative David Niezgodski. HB 1269 from the 2008 session was the basis for the discussion.

M. Status Report from PERF and TRF on the Impact of the Current Economic Conditions of the Respective Funds

This issue was brought to the Commission by Representative David Niezgodski and has as its basis the recent turbulent times in the stock market.

N. Amend the Definition of Chaplain as it Pertains to Police and Fire Departments

This issue was brought to the Commission by the Indiana Professional Firefighters' Union.

O. A Report from the Indiana Association of Cities and Towns (IACT) Regarding the Various Proposals Made to the Commission Which Affect Cities and Towns

The Commission requested from IACT their position on the various proposals which affected cities and towns.

III. SUMMARY OF WORK PROGRAM

During the interim following the conclusion of the 2008 session of the General Assembly, the Commission met four times on the following dates:

August 20, 2008
September 11, 2008
October 2, 2008
October 15, 2008

All four meetings were held in the State House in Indianapolis.

IV. SUMMARY OF TESTIMONY

A. PERF Issues

(1) Vesting Requirement

The Commission heard a proposal from Phil Conklin representing the Retired Indiana Public Employees Association, Inc., (RIPEA) to reduce from ten to eight years the vesting requirement for PERF. The proposal would result in a 0.66% increase in the state contribution rate, with no change in the funded status. For municipalities, there would be a 0.74% increase in the contribution rate, with no change in the funded status. Mr. Conklin told the Commission that 85% of the respondents to a RIPEA survey of 119 mayors said that they favor reducing the vesting period.

David Larson representing the Indiana State Employees Association (ISEA) told the Commission that he does not support reducing the vesting period. He said that he would rather use the money to fund retirees who are long-term employees and raise the COLAs, along with funding health care benefits.

Ms. Lettie Oliver of the American Federation of State County and Municipal Employees (AFSCME) Council # 62 testified in support of reducing the vesting period.

(2) Increase in the PERF Multiplier

The Commission heard a proposal from Phil Conklin to allow an employee to use all or a portion of PERF's 3% mandatory employee contribution to purchase an additional multiplier above the current 1.1%, with PERF matching 25% to 50% of the amount designated by the employee. The purchase would be at full actuarial equivalence.

David Larson testified in opposition to reducing the vesting period, but testified in favor of using resources to increase the multiplier.

(3) Elimination of Age 55 Requirement for Early Retirement

The Commission heard a proposal from David Larson of the Indiana State Employees Association to remove the age 55 requirement for early retirement.

The Commission recommended deferring consideration of this item until next year's interim. Mr. Phil Conklin of RIPEA concurred in the recommendation. Ms. Nancy Pappas of the ISTA spoke in favor of the proposal.

(4) Alignment of the Number of Years of Service Required for a Member to Vest with the Number of Years of Service Required to Receive Death Benefits

The Commission heard a proposal from Representative William Ruppel to assist a constituent. The constituent had worked for more than 10 years for a local government unit and was vested in PERF. He was at retirement age, but elected to continue working. He was diagnosed with cancer and became seriously ill. He passed away soon after, having not yet met the 15-year requirement or officially retiring. Before his death, his wife contacted PERF to ask if he needed to officially retire since he had not yet reached the 15-year requirement. PERF advised that he did not and that the spouse was entitled to full benefits including the state contribution to the pension fund. After his death, the spouse applied for his pension benefits and found that she would only be receiving his contributions, while the state would withhold the state contributions because he had not retired and had not worked more than 15 years. She contacted PERF again and was told that she was misinformed originally. PERF advised her if her husband would have signed retirement papers, she would have been entitled to the full pension.

The proposal was to reduce the years of service from 15 to 10 for a surviving spouse to be eligible for a survivor benefit. Representative Ruppel wanted the proposal to be retroactive.

B. TRF Issues

(1) $500 Monthly Minimum Benefit

The Commission received a proposal, Preliminary Draft (PD) 3005, from Senator Vaneta Becker, which provides for a monthly minimum benefit of $500. The proposal would affect 774 current retirees.

Mr. Ralph Ayres, Executive Director of the Indiana Retired Teachers Association (IRTA) testified in favor of PD 3005.

Mr. Eugene Wease, President of the IRTA testified in support of PD 3005.

Miss Nancy Tolson, President-elect of the IRTA, spoke in favor PD 3005.

Miss Julia Pogue, Chief Financial Officer of the TRF, told the Commission that the cost of PD 3005 would be $1.6 M in the first year and would decline in subsequent years. The ultimate cost of PD 3005 is an increase in the present value of future benefits of approximately $10 M.

C. 1985 Judges' Retirement System Issues

(1) Benefits Payable to Members Who Retire Before January 1, 2010

This issue was brought to the Commission by Senator Robert Deig. He testified that as of July 1, 2008, there were 55 members affected. Mr. Doug Todd, actuary for the Judges' Retirement System, testified that this proposal would be an average increase in benefits of 35%.

D. Prosecuting Attorneys' Retirement Fund Issues

(1) Equalizing the Prosecutors' and Judges' Pension Benefits

The Commission heard testimony from Ms. Karen Richards, President of the Indiana Prosecuting Attorneys Council, asking the Commission to recommend equalizing the pension benefits of prosecutors and judges.

Mr. Steve Johnson, Executive Director of the Indiana Prosecuting Attorneys Council, outlined the specific changes of the proposal. The proposal would do the following:

(a) eliminate contributions to PARF for a member who completes 22 years of service;
(b) reduce from 0.25% to 0.1% per month the factor used to adjust a member's benefit when the member chooses to retire before reaching age 65;
(c) prorate benefits to include partial years of service;

(d) change eligibility criteria for a disability benefit to include a disability rendering the member unable to perform the duties of a prosecutor;

(e) align the disability benefit with the disability benefit received by a member of the Judges' Retirement System by

(1) allowing a member with less than five years of service to receive a benefit;

(2) using the same salary replacement percentages to compute a disability benefit; and

(3) prorating the disability benefit to include partial years of service.

(f) increase the minimum death benefit from $7,000 to $12,000;

(g) include the county supplement paid to a member in the total salary used to compute a member's retirement or disability benefit; and

(h) change the definition of salary used to compute a member's benefit to the salary currently being paid for the position that the member held at separation from service (rather than the salary paid to the member at separation of service). Mr. Johnson requested that this change apply only prospectively.

Mr. Doug Todd, actuary for the PARF, presented the fiscal impact of the proposal. The cumulative impact to the Fund for proposals (a) through (h) above would be an increase of $14.55 M in the unfunded liability, an increase of $2.11 M in annual funding, and an increase of 11.44% in the annual funding as a percent of pay. Mr. Todd also told the Commission that the PARF is pre-funded, while the Judges' Retirement System is a pay-as-you go system.

(2) Increase in Court Fees to Fund the Proposed Changes

Both Mr. Johnson and Amy Lavender Flack, representing the Prosecuting Attorneys Council, suggested a $2 increase in court filing fees to pay for the proposed changes. Ms. Flack told the Commission that Indiana has lower filing fees than the surrounding states.

(3) Combining the Judges' Retirement System and the Prosecuting Attorneys' Retirement Fund

Mr. Todd, the actuary for both funds, told the Commission that there would be problems and many hurdles in the combining of the funds, but it could be done.

E. Divesting Indiana's Public Pension Funds from Investments in Terror-Sponsoring States

(1) Background

Mr. Christopher Holten of the Center of Security Policy addressed the Commission and urged that Indiana's public pension funds adopt a policy that requires the divestment of stock of companies that do business in countries that support terrorism. Over $200 billion are currently invested in the stock of publicly traded companies that do business in terrorist countries. The companies are all foreign-owned. The five targeted countries accused of supporting terrorism are Cuba, Iran, Syria, North Korea, and Sudan.

(2) Suggested Options

Mr. Holten discussed options for pension funds. One of the options requires investment managers to disclose any targeted companies that are contained within invested funds.

He also said that asset managers should disclose to client pension funds the names of companies that pose a global security risk and certify that no companies that support terrorism are in the portfolios of asset managers.

(3) Phase-In Period

Mr. Holten told the Commission any divestment of pension funds should be phased in over a period of years to minimize the disruption to the pension funds.

(4) Results

Mr. Holten said that there is no evidence that a divestment policy targeted at terror-sponsoring states hurts investment returns or is administratively expensive.

F. Factors Used in COLA Determinations for PERF, TRF, and the State Police and Providing COLAs Biennially in the State Budget

These two issues, while separate, became joined during Commission discussion.

(1) History

Mr. Phil Conklin said that PERF COLAs over the past several years have not matched the cost-of-living index.

(2) State Budget

Mr. Conklin supports a biennial COLA separate from the state budget, unless there is language in the budget bill that requires the COLA to match the Social Security COLA.

Mr. Andy Thomas, Executive Director of the Indiana Retired Teachers Association, said that the IRTA wants a two-year COLA and a $500 minimum monthly benefit. It could be tied to the Consumer Price Index or the Social Security COLA.

Miss Nancy Tolson, President-elect of the IRTA and Mr. Eugene Wease, president of the IRTA, said that they support the inclusion of the COLA in the state budget.

Mr. Steve Buschmann, representing the Indiana State Police Alliance, stated that he favors building the COLA in the state budget, but wants to retain the limiting COLA factors.

Mr. Ralph Ayres, former Executive Director of the Indiana Retired Teachers Association, said that he supports providing COLAs biennially in the state budget.

Mr. Steve Russo, Executive Director of TRF and Mr. Terren Magid, Executive Director of PERF, both told the Commission that including the COLA in the state budget would have no fiscal impact on them.

G. Public Safety Issues

(1) Authorizing Local Units of Government to Appoint or Reappoint Police Officers and Firefighters Who Are At Least 36 Years of Age

Mr. Doug Todd presented his fiscal analysis on this issue. The increase in annual cost would be $1.4 M, and the increase in annual cost as a percent of pay is 0.255%, with no increase in the unfunded accrued liability and no decease in the funded status.

Mr. Steve Barley, Chief Operating Officer of PERF, said that one state has a maximum hiring age of 34 for firefighters only, several states have no maximum age, and other states allow local units to set the maximum age.

Mr. Tom Hanify, President of the Indiana Professional Firefighters Union, supports this proposal if it does not negatively affect the 1977 Police Officers' and Firefighters' Pension and Disability Fund.

Mr. Tom Miller, President of the International Professional Firefighters Union, mentioned Age Discrimination in Employment Act (ADEA) concerns.

Mr. Matt Brase of the Indiana Association of Cities and Towns urged caution for any proposal creating an unfunded mandate on cities and towns.

(2) Tax-Free Death Benefit for the 1977 Police Officers' and Firefighters' Pension and Disability Fund

Mr. Steve Barley of PERF contacted three major insurance companies about underwriting a group life insurance policy for the benefit, but none of the carriers were interested. If anyone other than the member pays the premium, PERF is required to issue a Form 1099 and the member is required to pay income taxes. Annual premium costs for a $12,000 benefit is $1.4 M. PERF administrative costs are estimated to be approximately $1 M for system changes and $200,000 to mail the 1099s.

Doug Todd said that if insurance premiums are paid by the 1977 Police Officers' and Firefighters' Pension and Disability Fund, the increase in annual funding is about $670,000. If the insurance premiums are paid by the members outside the Fund, the Fund would experience an annual cost savings of about $370,000. If the death benefit is reduced to pay the insurance premium, the annual funding would not change, but the death benefit would be reduced from $12,000 to about $6,240.

Mr. Hanify expressed his appreciation to the Commission for looking at this issue.

(3) Use of PERF Disability or Worker's Compensation Insurance for Firefighter Disability

Mr. Hanify presented this issue to the Commission in order to provide disability benefits to firefighters who work with towns. He said that firefighter line-of-duty deaths are covered by all units except towns.

(4) 1977 Police Officers' and Firefighters' Pension and Disability Fund Minimum COLA

Several rates were discussed by the Commission. Mr. Todd provided the fiscal analysis for rates of 1.5%, 2.0%, and 2.5%. Annual costs ranged from approximately $1.5 M to $2.02 M. The average COLA paid to the 1977 Fund from 1978 to the present has been 2.73%.

(5) 1977 Police Officers' and Firefighters' Pension and Disability Fund Surviving Spouse Benefit Increase

The Commission entertained increasing the benefit from (a) 60% of a member's benefit to 75% and (b) from 60% to 80%.

Mr. Hanify spoke in favor of increasing the benefit. Mr. Todd provided the fiscal analysis for the increases. The increase to 75% would increase annual costs by $8.2 M, with an increase in the unfunded accrued liability of $64.45 M. The cost as a percentage of payroll would increase by 1.5%. The increase to 80% would increase annual costs by $10.9 M, with an increase in the unfunded accrued liability of $ 85.9 M. The cost as a percentage of payroll would increase by 1.9%.

(6) Line-of-Duty Disability for Members of 1977 Police Officers' and Firefighters' Pension and Disability Fund

Mr. Leo Blackwell of the Indiana Fraternal Order of Police and also speaking on behalf of the Indiana Professional Firefighters brought this issue to the Commission. The issue concerns the recalculation of a Class 1 disability at age 52 for a regular retirement benefit for an Evansville firefighter. The 1977 Advisory Committee for the 1977 Police Officers' and Firefighters' Pension and Disability Fund is waiting on receipt of a Private Letter Ruling from the Internal Revenue Service (IRS) to determine if the recalculation is a taxable event. PD 3122, prepared for Representative Dennis Avery, was distributed to the Commission and discussed. PD 3122 eliminates the recalculation of the Class I disability benefit for life.

Mr. Steve Barley, Chief Operating Officer of PERF, told the Commission that the parties must go back to the IRS. Representative Niezgodski requested that the parties look at this issue again regarding the higher benefit and the taxability issue.

(7) Purchase of Military Service Credit for Members of the 1977 Police Officers' and Firefighters' Pension and Disability Fund

Mr. James Ridley of the Indiana Professional Firefighters Union of Indiana requested the same option available to PERF members to purchase at full actuarial cost up to two years of military service. The purchase cannot be used for vesting purposes and cannot be used to add additional years of service beyond 32 years. Doug Todd, actuary for the Fund, said that there would be no additional cost if purchased at full actuarial cost.

<u>H. Issues Related to Payment of Benefits under the 1925 Police Pension Fund, the 1937 Firefighters' Pension Fund, and the 1953 Police Pension Fund</u>

(1) Basic Issue

Mr. Magid of PERF told the Commission that the basic issue here was to whom PERF would make payment for the benefit. Currently, PERF makes the semi-annual payments to the local unit from the Pension Relief Fund, with the local unit making payments to the individual recipients.

(2) Possible Change

A potential change would have PERF make the payments directly to the recipients.

(3) Problems

Mr. Magid identified several problem areas with PERF making the benefit payments directly to recipients. These included (a) the multiplicity of plans; (b) the differences between the plans, and (c) the reliability of the data.

<u>I. Other Issues Considered by the Commission</u>

SEA 501 2007 -

(1) A Status Report on the Implementation of the Retirement Medical Benefits Account Established by SEA 501 (P.L. 44-2007)

Christopher Ruhl, Director of the Indiana State Budget Agency, presented the 2008 update concerning the retirement benefits account administered by the State Budget Agency. Mr. Ruhl told the Commission that for FY 2008, there were 725 retired participants with an average contribution per participant of $25,700, and total claims for all retired participants of $507,000. In addition, 34,800 active participants received a credit averaging $1,100 on June 30, 2008.

Mr. Ruhl said for the current biennium, the General Assembly appropriated $23 M annually from the state General Fund from Cigarette Tax revenues under the Healthy Indiana Plan. The actual cost was $56 M; $38 M in annual contributions for active participants. Administrative costs totaled $100,500, paid from investment earnings of $700,000.

In 2008, the General Assembly expanded the use of amounts in the account to include the purchase of coverage in the state's self-insured health plans. Expenses for claims by retired participants are significantly greater than the premiums charged the retirees. This creates an "implicit subsidy". Mr. Ruhl said that the state and active employees fund this subsidy over time through the payment of higher premiums. The current "implicit subsidy" is estimated at $35 M to $76 M, the actual amount depending upon how many retired state employees elect to participate. The additional amount required to actuarially fund this subsidy is $4 M to $9 M annually. The state is required to report this unfunded liability under GASB 45.

Mr. Ruhl outlined issues facing the retirement medical benefits account. The first is cost. The FY 2008 unfunded liability of $ 33 M was paid by a one-time allocation of general fund dollars from the state's personal services contingency fund. Mr. Ruhl said that the cost of the annual contribution for active participants is likely to exceed the $23 M annual appropriation made for the last biennium.

Mr. Ruhl stated that the second cost issue is the implicit subsidy, which was not considered by the General Assembly when it expanded the use of the accounts.

The third issue is lack of cost savings. He said that the account was sold on the basis that the bonus contributions would encourage a substantial number of state employees to retire, thereby providing operating savings that could be used by state agencies to pay for the cost of the account. In FY 2008, the state had fewer retirements (725) than the historical average of 750.

(2) Section 401(h) Update

Mr. Steve Barley of PERF provided an update on the Section 401(h) account administered by PERF. In July 2007, PERF submitted an approval request to the IRS. In June 2008, the IRS notified PERF that, because the request had been submitted off-cycle, the IRS would not address it until all of the on-cycle requests were completed. PERF was advised that withdrawing and resubmitting the request in January 2009, as part of PERF's on-cycle request, would result in a quicker IRS review. Mr. Barley said that PERF is in the process of finalizing its on-cycle filing. Implementation of the Section 401(h) account will not occur until PERF receives IRS approval.

<u>Age Discrimination</u>

(1) Issue

Mr. Paul Chase, Associate State Director for Public Policy for the American Association of Retired Persons (AARP), addressed the Commission. Mr. Chase said that Indiana has a weak age discrimination law, commenting that violations of the law are referred to the Indiana Department of Labor (DOL) and not the Indiana Civil Rights Commission (ICRC). He said that 85% of Indiana employees do not have meaningful remedies for age discrimination.

Ms. Lettie Oliver of AFSCME Council # 62 requested that age discrimination be part of the ICRC. She said that she refers her members to the Equal Employment Opportunity Commission (EEOC), but would prefer going to the state.

Ms. Nancy Pappas of the Indiana State Teachers Association (ISTA) said that it is easier and cheaper to resolve age discrimination issues on the EEOC level as opposed to going to court.

(2) Federal Participation of the EEOC

Mr. Webster Smith, EEOC, Deputy Director of the Indianapolis office (district for Indiana, Kentucky, Michigan, Ohio, and Illinois), addressed the Commission. Mr. Webster said that the EEOC enforces the Age Discrimination in Employment Act (ADEA). The EEOC gathers information and makes recommendations. The ICRC has a working relationship with the EEOC. He said that employers with 20 or more employees are covered by the EEOC. Exempt categories include elected officials, public safety personnel, qualified executives, and tenured college and university professors.

Remedies include (1) monetary damages which include back pay, front pay, liquidated damages, interest, court costs, and attorneys' fees; and (2) liquidating damages which includes employer being liable for liquidated damages where willful violation occurred; liquidated damages represent double the amount assessed against the employer.

Mr. Webster said the top seven ADEA issues are discharge, harassment, discipline, hiring, promotion, layoff, and demotion.

(3) Suggested Solutions

Mr. Chase suggested transferring jurisdiction to the ICRC and adding age discrimination to the ICRC mix of categories. He also suggested strengthening enforcement.

<u>Misclassification of Employees</u>

(1) Issue

Mr. Kelly Pinkham, Research Associate, Department of Economics, University of Missouri-Kansas City, defined misclassification of employees as the situation in which an employer treats a worker as an independent contractor when the worker would otherwise be a wage or salaried employee.

(2) Results

Mr. Pinkham said that if an employee is classified as an independent contractor, the employer does not pay various employee-based payroll costs (such as Social Security, unemployment insurance, and worker's compensation insurance) and the worker is not fully protected under minimum wage, overtime, worker's compensation, unemployment insurance, collective bargaining, and other employer-based laws.

(3) Suggested Solutions

Mr. Pinkham recommended that enforcement efforts target habitual, systematic violators. He also suggested that Indiana address this problem by (a) encouraging data sharing among state agencies, (b) standardizing the definition of independent contractor, (c) performing targeted audits of repeat offenders, and (d) providing meaningful penalties.

Amending the Definition of Chaplain Death-Benefit Purposes

(1) Issue

The issue is a suggested change in the definition of chaplain as it pertains to police and fire departments to add additional requirements for any person so designated as a chaplain.

(2) Results

The Commission did not finalize any specific recommendation as of the third meeting. At its fourth meeting, the Commission heard additional testimony on this subject and made a recommendation.

Deferred Retirement Option Program (DROP)

(1) Issue

Mr. Leo Blackwell of the Fraternal Order of Police raised a concern about language contained in HEA 1001 of the 2008 session as it relates to the DROP. Mr. Blackwell inquired as to whether the DROP is extended indefinitely or expires December 31, 2010.

(2) Results

Mr. Blackwell told the Commission that he would work with the Legislative Services Agency (LSA) on the issue of the DROP.

J. Reports to the Commission

(1) PERF's Annual Report

Terren Magid, Executive Director, presented PERF's 2008 annual report. PERF's statement of net assets of the Consolidated Retirement Investment Fund (CRIF), which contains substantially all of the investments for the plans administered by PERF, shows an 8.4% decrease in total net assets between July 1, 2007, and June 30, 2008. Mr. Magid said that the funded status of the six managed PERF funds is 99.3%, with the

1977 Police Officers' and Firefighters' Pension and Disability Fund being 108%. PERF, the largest of the six funds, has a funded status of 98.2%.

Mr. Magid told the Commission that PERF has received its second clean audit opinion from the State Board of Accounts.

Mr. Magid said that PERF has a target date of January 1, 2010, for daily valuations of the employee annuity savings account. PERF goals for FY 2009 are IT data clean-up and technical changes for phase two next year.

Mr. Magid gave a brief report on the status of the Legislators' Defined Contribution Pilot Program. Recommended legislation would be to require the following: (a) data and contributions to be submitted electronically, (b) simplifying back-interest calculations; and (c) making the Legislators' Defined Contribution Pilot Program permanent.

(2) PERF Sudan Divestment Report

Mr. Magid said that both PERF and TRF hired a research firm to assist with the divestment effort. Both PERF and TRF contacted all companies who met the criteria for divestment. Mr. Magid said that the value of the holdings in companies totaled $25.7 M as of June 30, 2008, down from $64.2 M as of January 1, 2008.

(3) TRF Annual Report

Mr. Steve Russo, Executive Director of the TRF, presented TRF's 2008 annual report. He said that the value of TRF assets as of June 30,2008, was $8.6 B. Of this amount, $2 B belongs to the Pension Stabilization Fund.

Mr. Russo said that TRF manages one fund, with two accounts. The pre-1996 account is a defined benefit account, funded on a pay-as-you-go basis, while the 1996 account is a defined benefit account is actuarially pre-funded. The 3% contribution for a member annuity savings account is picked up by employers for the most part.

Mr. Russo addressed the issue of immediate vesting in TRF, telling the Commission that the present value of future benefits would increase by a total of $9.6 M, with $1.8 M attributable to the pre-1996 account and $7.8 M attributable to the 1996 account. TRF estimates administrative costs for immediate vesting at $1 M to $1.5 M for processing the additional applications and disbursements.

(4) TRF Sudan Divestment Report

Ms. Julia Pogue, TRF Chief Financial Officer, told the Commission that TRF completed its divestment of scrutinized companies by June 30, 2008. The amount divested was $44.3 M, less than 0.5% of total assets.

(5) PERF and TRF Status Report on the Impact of the Current Economic Conditions of the Respective Funds

Terren Magid, speaking on behalf of PERF and TRF, said that the current economic conditions have not compromised in any way the ability of either fund to meets its obligations. There have been recent losses, but the portfolios for both funds are diversified, with a focus on the long term.

(6) Report from the Indiana Association of Cities and Towns (IACT)

Mr. Matt Brase of the Indiana Association of Cities and Towns reported to the Commission that IACT could not support any proposal which added unfunded mandates on Indiana cities and towns, due to the current economic climate that local governments are experiencing. He urged Commission members to support only those legislative agenda items which do not add costs or unfunded mandates to municipalities.

V. COMMITTEE FINDINGS AND RECOMMENDATIONS

The Commission made the following recommendations:

The Commission voted unanimously to defer consideration of the removal of age 55 for early retirement until next year's Commission.

The Commission voted unanimously to recommend PD 3324, as amended, for introduction in the 2009 session of the General Assembly. PD 3324, as amended, provides that disability benefits for members of the 1977 Police Officers' and Firefighters' Pension and Disability Fund for Class I impairments and certain Class II impairments (disabled member) are for life.

The Commission voted unanimously to recommend PD 3347 for introduction in the 2009 session of the General Assembly. PD 3347 authorizes, under certain conditions, a member of the 1977 Police Officers' and Firefighters' Pension and Disability Fund to purchase up to two years of military service credit for active military service.

The Commission voted unanimously to recommend PD 3320 for introduction in the 2009 session of the General Assembly. PD 3320 adds certain requirements for a chaplain to qualify for a special death benefit. PD 3320 also provides that chaplains appointed or designated prior to July 1, 2009, are not subject to the additional requirements.

The Commission voted unanimously to recommend PD 3328, as amended, for introduction in the 2009 session of the General Assembly. PD 3328 changed the Prosecuting Attorneys' Retirement Fund to provide for the following: (1) pro-ration of benefits for partial years of service; (2) eliminate the requirement for members to contribute after 22 years of service; (3) increase percentages used in computing disability benefits; (4) change eligibility for disability to inability to perform work as a prosecutor; (5) eliminate requirement of five years of service for disability benefits; (6) reduce the reduction factors for retirement age 65; (7) post-retirement increases; (8) increase minimum death benefit from$7,000 to $12,000; and (9) include county supplement of $5,000 with the state salary for pensions.

The Commission voted unanimously to recommend PD 3292, as amended, for introduction in the 2009 session of the General Assembly. PD 3292, as amended, requires both the PERF and TRF to divest from companies that do business in countries listed as state sponsors of terror.

The Commission voted unanimously to recommend language concerning worker classification.

The Commission voted unanimously to recommend language regarding age discrimination.

The Commission voted unanimously to accept the draft copy of the final report with the understanding that action taken at the Commission's last meeting on October 15th would be included in the final report.

W I T N E S S L I S T

Ayres, Ralph, Indiana Retired Teachers Association
Barley, Steve, Public Employees' Retirement Fund
Becker, Senator Vaneta
Blackwell, Leo, Indiana Fraternal Order of Police
Buschmann, Steve, Indiana State Police Alliance
Chase, Paul, American Association of Retired Persons
Conklin, Phil, Retired Indiana Public Employees Association
Flack, Amy Lavender, Krieg DeVault
Hanify, Tom, Indiana Professional Firefighters' Union
Holten, Christopher, Center for Security Policy
Larson, David, Indiana State Employees Association
Magid, Terren, Public Employees' Retirement Fund
Miller, Tom, International Professional Firefighters' Union
Pinkham, Kelly, University of Missouri-Kansas City
Pogue, Julia, Teachers' Retirement Fund
Richards, Karen, Indiana Prosecuting Attorneys' Council
Ridley, James, Indiana Professional Firefighters' Union
Ruhl, Christopher, State Budget Agency
Ruppel, Representative William,
Russo, Steve, Teachers' Retirement Fund
Smith, Webster, Equal Employment Opportunity Commission
Thomas Andy, Indiana Retired Teachers Association
Todd, Doug, McCready & Keene
Wease, Eugene, Indiana Retired Teachers Association